

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
XO Communications Services Inc.)	WC Docket No. 06-122
Request for Review of Decision of the)	
Universal Service Administrator)	

REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on January 6, 2011, (DA 11-24), respectfully submits its reply comments on the Request for Review of XO Communications Services Inc. (“XO”) of a Universal Service Administrative Company (“USAC”) decision in which USAC reclassified revenue from XO’s MPLS-enabled services as assessable telecommunication services revenue for purposes of universal service contribution requirements.¹

The debate over the appropriate regulatory treatment of Multi-Protocol Label Switching (“MPLS”) services has lingered for many years now. Most recently, in 2009, the Commission sought comments on the Petition for Clarification, or in the Alternative, Application for Review filed by Masergy Communications Inc.² In its Comments there, Sprint explained that MPLS Services are “information services” that are exempt from Universal Service Fund contributions and that the imposition of a USF obligation on such information services or the reclassification of MPLS services as telecommunications services is beyond the Bureau’s delegated authority. While Section 254(b) empowers the

¹ Request for Review of Decision of the Universal Service Administrator by XO Communication Services, Inc., WC Docket No. 06-122 (filed December 29, 2010) (“ Request”).

² See Public Notice, *Comment Sought on Masergy Communications Inc. Petition for Clarification, or in the Alternative, Application for Review*, WC Docket No. 06-122, DA 09-1021 (May 7, 2009), stating that “Masergy requests additional clarification concerning contribution obligations related to MPLS.”

Commission to extend a USF contribution obligation to non-telecommunications services, such as MPLS network services, the Commission must comply with the APA's notice-and-comment requirements to do so.

In its Comments, Qwest Communications International Inc. also recommends that “[t]he Commission should address the contribution status of MPLS-based services through a rule-making with notice and opportunity for broad comment followed by prospective application of its new rules.”³ Similarly, Level 3 and PAETEC state that “[t]he Commission should make all service classifications in the context of a rulemaking, declaratory ruling or USAC request for guidance to give parties notice and the opportunity to comment on the issue and appeal any FCC determination.”⁴ Thus, the Commission should commence a rulemaking to develop a complete record if it believes that certain MPLS services may be telecommunications services or that MPLS services should be subjected to USF contributions pursuant to its permissive authority.

Sprint does not agree with AT&T that the Bureau should determine whether or not XO's MPLS offering is an “information service” or a “telecommunications service.”⁵ As discussed in Sprint's Masergy Comments (at 4-5), the Commission has delegated to the Bureau only narrow authority with respect to USF. Specifically, the Commission determined that “this delegation extends only to making changes to the administrative aspects of the reporting requirements, not to the substance of underlying programs.”⁶ A review by the Bureau that is service-specific and carrier-specific and that, according to AT&T, would require the Bureau to “draw from over three decade's worth of Commission precedent on the topic of basic and enhanced services” (at 8) clearly cannot

³ Comments of Qwest Communications International (“Qwest”) at 5.

⁴ Comments of Level 3 Communications, LLC (“Level 3”) and PAETEC Holding Corp. at 8.

⁵ Comments of AT&T at 6-10.

⁶ *1999 Contributor Reporting Requirements Order*, 14 FCC Rcd 16602, 16621 ¶40 (1999).

be considered an “administrative aspect” of the USF program. In order to ensure consistency across all carriers and their services, a rulemaking is required.

Sprint agrees with XO (Request at 10-17), Qwest (at 5) and Verizon⁷ that if the Commission determines through a rulemaking that MPLS services must be subject to USF contributions, the contribution requirement on MPLS services should be applied on a prospective basis. As Sprint stated in its Masergy Comments (at 15), “[i]t would be manifestly unjust to impose such a new obligation retroactively because retroactive application would prevent MPLS network operators from exercising their right to recover these costs from their customers.”

Sprint therefore urges the Commission to find that USAC erred in concluding that revenues from MPLS services are subject to USF contributions. However, if the Commission believes otherwise, it should commence a rulemaking to develop a complete record that supports this determination.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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⁷ Comments of Verizon at 10-17.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing “Reply Comments of Sprint Nextel Corporation” was filed electronically or via US Mail on this 22nd day of February, 2011 to the parties listed below.

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